

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

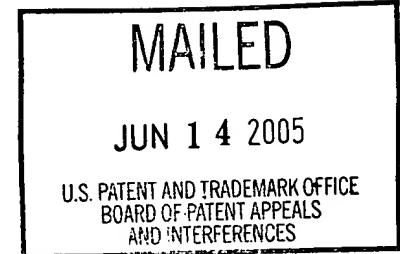
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN EDWARD FETKOVICH, WAI MAN LAM, and
GEORGE WILLIAM WILHELM JR.

Appeal No. 2005-1192
Application No. 09/443,204

ON BRIEF



Before HAIRSTON, RUGGIERO and DIXON, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, 4, 5, 7 through 14, 16 through 19, 21 through 29, 31, 32 and 34 through 38.

The disclosed invention relates to a method and system for dynamically varying the encryption of a stream of data by an encryption unit by dynamically changing simultaneously multiple encryption parameters, and for taking into account the

dynamically changed, multiple encryption parameters during the decryption of the encrypted data by the decryption unit.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A method for protecting a stream of data to be transferred between an encryption unit and a decryption unit, said method comprising:

encrypting the stream of data at said encryption unit for transferring of said encrypted stream of data from said encryption unit to said decryption unit;

dynamically varying said encrypting of said stream of data at said encryption unit by dynamically changing simultaneously multiple encryption parameters and signaling said dynamic change in encryption parameters to said decryption unit, said dynamically varying of said multiple encryption parameter being responsive to occurrence of a predefined condition in said stream of data; and

decrypting said encrypted data at the decryption unit, said decrypting accounting for said dynamic varying of said encrypting by said encryption unit using said dynamically changed, multiple encryption parameters.

The references relied on by the examiner are:

Jones	5,412,730	May 2, 1995
Warren et al. (Warren)	5,719,937	Feb. 17, 1998
Nardone et al. (Nardone)	5,805,700	Sep. 8, 1998
Leppek	5,933,501	Aug. 3, 1999
Aucsmith et al. (Aucsmith)	5,991,403	Nov. 23, 1999
		(filed Dec. 23, 1996)

Chiariglione, "Digital Television Achieves Maturity," 21st Impact - Opima, at <http://www.vxm.com/impact.opima.html> (last visited on Sep. 13, 2003) (hereinafter referred to as Chiariglione).

Appeal No. 2005-1192
Application No. 09/443,204

Claims 1, 2, 5, 7 through 14, 16 through 19 and 22 through 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Nardone and Leppek.

Claims 1, 13, 14 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Aucsmith in view of Nardone and Leppek.

Claims 4 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Nardone, Leppek and Chiariglione.

Claim 28 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Warren in view of Nardone and Leppek.

Claims 29, 32 and 34 through 38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Warren, Nardone and Leppek.

Claim 31 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Jones in view of Nardone, Leppek, Chiariglione and Warren.

Reference is made to the briefs and the answer for the respective positions of the appellants and the examiner.

OPINION

The rejections of record are hereby reversed, and a new ground of rejection is entered under 37 CFR § 41.50(b) as to all of the claims on appeal.

All of the claims on appeal require "dynamically changing simultaneously multiple encryption parameters." The examiner acknowledges (answer, pages 6, 27 and 32) that the primary references to Jones, Aucsmith and Warren, respectively, all fail to teach the quoted limitation found in all of the claims on appeal. The examiner turns to Nardone for a teaching of "dynamically changing encryption parameters" (answer, page 6), but Nardone's teaching (column 1, lines 51 through 59; column 4, lines 23 through 34) of dynamically adjusting encryption policy is not described in the context of "dynamically changing simultaneously multiple encryption parameters." Leppek allegedly "teaches setting multiple parameters" (answer, page 6), but, instead of performing any encryption operations "simultaneously," all encryption in Leppek is performed "sequentially" or "successively" (Abstract). The multiplexing teachings of Chiariglione do not cure any of the noted shortcomings in the teachings of Jones, Nardone and Leppek.

Appeal No. 2005-1192
Application No. 09/443,204

In summary, all of the obviousness rejections of claims 1, 2, 4, 5, 7 through 14, 16 through 19, 21 through 29, 31, 32 and 34 through 38 are reversed.

The following new rejection of claims 1, 2, 4, 5, 7 through 14, 16 through 19, 21 through 29, 31, 32 and 34 through 38 is entered under the provisions of 37 CFR § 41.50(b):

Claims 1, 2, 4, 5, 7 through 14, 16 through 19, 21 through 29, 31, 32 and 34 through 38 are rejected under the first paragraph of 35 U.S.C. § 112 for lack of written description and lack of enablement. Neither the originally filed disclosure nor the originally filed claims sets forth dynamically changing "simultaneously" multiple encryption parameters. The originally filed disclosure (Abstract; page 4, lines 16 through 22; page 7, lines 22 through 25; page 13, lines 22 through 26; page 14, line 18 through page 15, line 8; page 19, lines 5 through 8) mentions dynamically changing parameters, but not "simultaneously." Thus, the claims are rejected for lack of written description. The claims are also rejected for lack of enablement because the skilled artisan would have to resort to undue experimentation to arrive at a system and method that is capable of dynamically changing "simultaneously" multiple encryption parameters.

Appeal No. 2005-1192
Application No. 09/443,204

Appellants' disclosure is of little help to the artisan because it is completely silent as to such a teaching.

DECISION

The decision of the examiner rejecting claims 1, 2, 4, 5, 7 though 14, 16 through 19, 21 through 29, 31, 32 and 34 through 38 under 35 U.S.C. § 103(a) is reversed.

This decision contains a new ground of rejection pursuant to 37 CFR § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 CFR § 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 CFR § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner

Appeal No. 2005-1192
Application No. 09/443,204

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record

REVERSED - 37 CFR § 41.50(b)

KENNETH W. HAIRSTON)
Administrative Patent Judge)

JOSEPH F. RUGGIERO)
Administrative Patent Judge)

JOSEPH L. DIXON)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES

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Appeal No. 2005-1192
Application No. 09/443,204

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